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MONTANA THIRTEENTH JUDICIAL DISTRICT COURT, YELLOWSTONE COUNTY

ARLENE SCHEITZACH,

Plaintiff,

-vs-

WELLS FARGO BANK, NATIONAL
ASSOCIATION and DOES I-V,

Defendants.

Dept. No. DV 17-0493

Cause No. RUSSELL C. FAGG

**COMPLAINT and DEMAND FOR
JURY TRIAL**

120/135848

COMES NOW Plaintiff Arlene Scheitzach, by and through her undersigned counsel of record, and hereby alleges the following:

PARTIES

1. Plaintiff, Arlene Scheitzach, is and was at all times relevant to this Complaint, a resident of Billings, in Yellowstone County, Montana.

2. Defendant Wells Fargo Bank, National Association ("Wells Fargo") is a Corporation with its principal place of business in Sioux Falls, South Dakota, licensed to conduct business in Montana, which provides various types of personal and business banking services and products to customers and employs Montana residents.

3. Wells Fargo owns and operates six branch locations in Billings, Montana.

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1 4. Defendants Does I-V are entities and/or individuals, presently unknown, who
2 may be responsible for the claims at issue in this Complaint.

3 **JURISDICTION AND VENUE**

4 5. This Court has personal and subject matter jurisdiction over Plaintiff's claims
5 against Defendants pursuant to Montana Rules of Civil Procedure 4(B)(1).

6 6. This Court is the proper venue for Plaintiff's claims against Defendants pursuant
7 to Montana Code Annotated § 25-2-121(b).

8 **FACTS COMMON TO ALL CLAIMS**

9 7. Plaintiff was hired by Wells Fargo in 2002 as a Phone Banker at a Wells Fargo
10 branch located in Sacramento, CA. Plaintiff was transferred in May 2011 as a Banker/Assistant
11 Manager to a Wells Fargo Billings branch located at 2235 Grant Road, Billings, Montana, 59102.
12 Plaintiff was subsequently transferred to a second Wells Fargo Billings branch located at 2334
13 Central Avenue, Billings, Montana 59102, and finally to a third Wells Fargo Billings branch
14 location ("Grand Location") located at 3137 Grand Avenue, Billings, Montana, 59102. Plaintiff
15 worked at the Grand Location up until her employment was terminated.

16 8. Plaintiff performed her job duties well and received multiple raises and
17 promotions.

18 9. Plaintiff was ultimately promoted to the position of Store Manager I. During her
19 term as Store Manager, she demonstrated exemplary work aptitude and outstanding customer
20 service.

21 10. While employed as a Store Manager, Plaintiff received numerous awards based
22 on her performance. In both 2014 and 2015 Plaintiff was recognized at the Wells Fargo national
23 awards ceremony as the "Top Manager" for the Rocky Mountain District.

24 11. Plaintiff's compensation package included company benefits, bonuses, and fringe
25 benefits at the time of her termination.

26 12. Wells Fargo utilizes a multi-tiered disciplinary policy for workplace issues,
27

1 including but not limited to employee performance issues and interpersonal disputes. The
2 warnings Wells Fargo issues graduate from Informal Warning, Formal Warning, Final Notice,
3 and Termination.

4 13. Before August 2015, Plaintiff had never been "written up" for any reason. In
5 August 2015, Plaintiff received a single Formal Warning citing an isolated customer complaint
6 and sales quality in her store.

7 14. In February 2015, Plaintiff took paid time off work—to which she was entitled—to
8 take care of her father, who was suffering from cancer, and also to address personal health
9 concerns. She was treated poorly at work after she returned.

10 15. In October 2015 Wells Fargo hired a "floating manager" who performed tasks
11 identical to those of Plaintiff's position.

12 16. On December 29, 2015, Plaintiff's supervisor, Mike Orlowski, issued an Informal
13 Warning to Plaintiff. One of the reasons stated in the warning was that Plaintiff had been
14 "conducting personal matters during business hours." Mr. Orlowski told Plaintiff that her prior
15 (August 2015) Formal Warning "fell off" and that she was "doing great." He also told her the
16 Informal Warning would "fall off" in 30-60 days.

17 17. On April 19, 2016, Plaintiff was terminated at 1:00 p.m. in front of her co-
18 workers without reason. She was not on any type of disciplinary plan at the time of her
19 termination.

20 18. Pursuant to company policy, Plaintiff called Wells Fargo Human Resources to
21 inquire about the reasons for her termination. Wells Fargo did not have a reason, was not aware
22 of the termination, and sent her a Dispute Resolution Request form, which was filled out and
23 returned on May 3, 2016, well ahead of the May 19, 2016 deadline provided by the Wells Fargo
24 grievance procedure guidelines.

25 19. Wells Fargo failed to adequately respond to Plaintiff's request or provide the
26 genuine reason for her termination.

COUNT I
Wrongful Discharge from Employment

20. Plaintiff re-alleges the allegations contained in Paragraphs 1 through 19 above, as though fully set forth herein.

21. The Montana Wrongful Discharge from Employment Act (Mont. Code Ann. § 39-2-901, *et seq.*) provides a remedy for employees who have been wrongfully terminated from their employment.

22. Defendants failed to follow their own written procedures in terminating Plaintiff without reason and without her being subject to any type of disciplinary action.

23. Plaintiff's termination violated Defendants' express provisions of its written personnel policies and was a violation of Mont. Code Ann. § 39-2-904(1)(c).

24. Plaintiff's discharge was not for good cause and was in violation of the Montana's Wrongful Discharge from Employment Act, Mont. Code Ann. § 39-2-904(1)(b) because Defendants lacked reasonable job-related grounds for the termination.

25. Defendants also violated the express provisions of its own written personnel policy because it has failed to comply with its own grievance procedures. Plaintiff has exhausted all of Wells Fargo's available administrative remedies for filing a Dispute Resolution form pursuant to Mont. Code Ann. § 39-2-911(2).

26. Plaintiff suffered a loss of economic benefits as a result of Defendants' wrongful discharge.

COUNT II
Negligent Training and Supervision

27. Plaintiff re-alleges the allegations contained in Paragraphs 1 through 26 above, as though fully set forth herein.

28. Defendants had a duty to train and supervise Plaintiff with reference to the performance of her duties as a Store Manager in conformity with its expectations.

29. At the time of her termination, Plaintiff was qualified for the position she held,

1 and had worked for Wells Fargo for over thirteen (13) years.

2 30. Prior to Mr. Orlowski's placement as her direct supervisor, Plaintiff had never
3 had a negative performance review.

4 31. Defendants negligently trained and supervised Plaintiff with reference to her
5 duties in relation to Defendants' expectations.

6 32. Any performance problems identified by Defendants in reference to Plaintiff's
7 employment were the result of negligent training and supervision of the Plaintiff by Defendants.

8 33. Plaintiff has been damages as a result of Defendants' negligent training and
9 supervision, in an amount be determined at trial.

10 **COUNT III**
11 **Negligent Investigation**

12 34. Plaintiff re-alleges the allegations contained in Paragraphs 1 through 33 above, as
13 though fully set forth herein.

14 35. Defendants did not confirm facts alleged or independently investigate allegations
15 to determine whether Plaintiff was appropriately performing her job duties.

16 36. The investigation conducted by Defendants and/or Defendants' agents was
17 conducted negligently and in contravention of Defendants' duty to the Plaintiff.

18 37. Plaintiff was damaged by Defendants' negligent investigation of her on-the-job
19 conduct.

20 38. Defendants are liable for Plaintiff's damages in relation to the negligent
21 investigation.

22 **COUNT IV**
23 **Discrimination**

24 39. Plaintiff re-alleges the allegations contained in Paragraphs 1 through 38 above, as
25 though fully set forth herein.

1 40. At the time of termination, Plaintiff was of a different gender than her supervisors.
2 She was older than most of her peers, and had recently taken time off for family and personal
3 medical issues.

4 41. Plaintiff was replaced by a member of the opposite gender, who was younger and
5 had not taken time off for health reasons.

6 42. Defendants cannot articulate a valid, non-discriminatory reason for terminating
7 Plaintiff. Even if Defendant could articulate such a reason, the reasons are pretextual and the
8 termination was the result of discrimination.

9 43. Defendants are liable to Plaintiff for damages as provided by the Montana Human
10 Rights Act.

11 WHEREFORE, Plaintiff requests that this Court grant judgment against Defendants as
12 follows:

- 13 1. For all remedies and damages under Mont. Code Ann. § 39-2-905, including lost
14 wages and loss of other employee fringe benefits, plus interest thereon, in an
amount to be determined at trial;
- 15 2. For damages related to Defendants' negligence;
- 16 3. For all remedies and damages available under civil rights laws affording
17 protection from discrimination based on age, gender and disability;
- 18 4. For attorney's fees and costs of suit; and
- 19 5. For such other and further relief as this Court deems just and proper.

20 DATED this 7th day of April, 2017.

21 MILODRAGOVICH, DALE
22 & STEINBRENNER, P.C.
Attorneys for Plaintiff Arlene Scheitzach

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25 By: MB
26 for Hannah Stone

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DEMAND FOR JURY TRIAL

COMES NOW Plaintiff Arlene Scheitzach, and demands a jury trial on all issues of fact in the above case.

DATED this 7th day of April, 2017.

MILODRAGOVICH, DALE
& STEINBRENNER, P.C.
Attorneys for Plaintiff Arlene Scheitzach

By: 

 Hannah Stone

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